

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail Express  
Priority Mail Express Contract 33

Docket No. MC2016-87

Competitive Product Prices  
Priority Mail Express Contract 33 (MC2016-87)  
Negotiated Service Agreement

Docket No. CP2016-112

PUBLIC REPRESENTATIVE COMMENTS ON  
REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD  
PRIORITY MAIL EXPRESS CONTRACT 33 TO THE COMPETITIVE PRODUCT LIST

(March 7, 2016)

The Public Representative hereby provides comments pursuant to Order No. 3107.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's request to add Priority Mail Express Contract 33 to the competitive products list.

The Postal Service's Request<sup>2</sup> includes a Statement of Supporting Justification (Statement), a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail Express Contract 33, and proposed changes to the Mail Classification Schedule (MCS). The Postal Service also filed under seal an unredacted version of Governor's

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<sup>1</sup> PRC Order No. 3107. Notice and Order Concerning the Addition of Priority Mail Express Contract 33 to the Competitive Product List. February 29, 2016.

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Express Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 26, 2016 (Request).

Decision No. 11-6, the contract, and a supporting financial model estimating the contract value during the first year.

The Postal Service states that Contract 33 is a competitive product featuring prices “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the classification and prices applicable to Contract 33 are authorized by Governors’ Decision No. 11-6. *Id.* The Postal Service further asserts that the Statement provides support for adding Contract 33 to the competitive product list and the compliance of Contract 33 with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D.

## **Comments**

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Contract 33 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service’s Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D at 2-3. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service’s Request to add Contract 33 to the competitive product list is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

Based upon a review of the financial data, the negotiated prices for Contract 33 should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

The contract is expected to remain in effect for a period of three years. The contract includes a mechanism for the adjustment of contract prices for the second and third year of the contract. The adjustments to contract prices are linked to the most recent average increase in prices of general applicability for Priority Mail Express Commercial Base. This price adjustment mechanism should improve the likelihood that Contract 33 meets the requirements of 39 U.S.C. § 3633(a) over its lifetime.

### **Conclusion**

The Public Representative, after reviewing all materials the Postal Service submitted under seal in this matter, recommends that the Commission approve the Postal Service's request.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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